

8 September 1997

Re: NEPA Technical Inquiry 0108 - GSA Environmental Justice Guidelines

Dear NEPA Call-In User:

This letter is in response to your June 4, 1997 request for GSA Environmental Justice guidelines. You stated you are under contract with GSA Region 10 to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for the construction of a Federal courthouse. The preferred alternative is in an area where there are expensive condominiums, small minority owned businesses, and low income housing. One alternative for construction of the courthouse will require the destruction of 51 low income housing units and some of the small minority owned businesses. Specifically, you would like to know if the demolition of these structures is in violation of Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." You would also like copies of any available GSA environmental justice guidance, and an example of a legal case involving EO 12898. You stated you have visited the NEPA Call-In World Wide Web (WWW) site and reviewed the EO and the Federal documents addressing environmental justice included there.

SUMMARY OF FINDINGS

NEPA requires Federal agencies to consider all environmental effects of their actions on the affected community, including human health, economic, and social effects. Although opinion is mixed on whether your proposed alternative also falls under EO 12898, NEPA requires Federal agencies to analyze the impacts of proposed agency actions on communities affected by these actions. In this instance the affected community includes a low-income and minority population. NEPA Call-In is providing draft environmental justice guidance from the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA), and general guidance from GSA. We are also providing one legal case involving EO 12898.

DETAILED FINDINGS

NEPA Call-In contacted the Branch Chief, Seattle Courthouse Project, Property Development, GSA Region 10, who verified your active contract status.

We then reviewed EO 12898 and "Memorandum for the Heads of All Departments and Agencies," President Clinton, February 11, 1994. Both documents are available on the NEPA Call-In WWW site at www.gsa.gov/pbs/pt/call-in/nepa.htm. EO 12989 directs Federal agencies to identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The Presidential memorandum specifically recognized the importance of procedures under NEPA to identify and address environmental justice concerns. The memorandum states that "each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by (NEPA)." Therefore, it follows that environmental justice issues should be addressed in NEPA documentation.

NEPA Call-In contacted Mr. Alex Varela, Attorney, Office of Environmental Justice, Environmental Protection Agency (EPA), (800) 962-6215, to determine if the alternative you mentioned falls under EO 12898. Mr. Varela stated, in his opinion, your situation is a social planning issue and does not explicitly fall under EO 12898 which is directed toward human health and environmental issues such as pollution. However, Mr. Varela stated NEPA requires that you consider the social consequences of the action. Mr. Varela advised that you evaluate the social consequences of the action in your EIS, and also consider environmental justice. He provided "Draft Guidance for Considering Addressing Environmental Justice under the National Environmental Policy Act," Draft CEQ Guidance, April 10, 1997 (enclosed) for your reference. Mr. Varela stated that although this is draft guidance, most Federal agencies are currently using it. Mr. Varela could not provide any legal cases similar to your proposed action involving EO 12898.

We then contacted General Counsel at the GSA National Office. The General Counsel concurred with Mr. Varela and stated GSA should address the social consequences of the action in the EIS and follow the CEQ guidance for environmental justice. The General Counsel could not identify a legal case concerning EO 12898 similar to your proposed action; however, the General Counsel identified one case "Chester Residents Concerned for Quality of Living vs. Seif," (enclosed) involving EO 12898 and waste facilities.

NEPA Call-In contacted the NEPA Call-In Program Manager, GSA; and Advisor with the Cultural Resource Compliance at GSA, for GSA guidance on environmental justice. The Program Manager and Advisor stated GSA does not have guidance on environmental justice at this time. However, the Advisor stated environmental justice issues should always be integrated into NEPA documentation. The Advisor further stated this particular action could have disproportionately high and adverse effects on the minority and/or low-income populations in the area, and therefore, fall under EO 12898.

We are providing the following environmental justice information for your reference:

1. "Guidance for Incorporating Environmental Justice Concerns into EPA's NEPA Compliance Analyses," Review Draft, July 12, 1996. This document contains chapters on evaluating environmental justice concerns, incorporating environmental justice into the NEPA process, public participation, and methods for identifying and assessing disproportionately high and adverse effects. This document is also available on the Internet at <http://es.inel.gov/oeca/ofa/ejcont.html>.
2. "Environmental Protection - Has It Been Fair?," EPA Journal, Volume 18, Number 1, March/April 1992, 175N-92-001. This journal contains numerous articles on environmental justice. The topics covered include the history of the environmental justice issue, different types of environmental justice, the overall environmental movement, environmental equity efforts by grass-roots organizations, and the need for an environmental justice office and legislation. This journal provides an excellent summary of the development of the environmental justice movement.

Finally, NEPA Call-In reviewed the draft "PBS NEPA Desk Guide" (final draft), May 16, 1997, which contains general guidance on environmental justice. This guide is pending approval by GSA and the information it contains is subject to change. Chapter 9, "Special Studies," states that "some level of environmental justice study is likely to be needed in most GSA NEPA reviews." The guidance further states if the

potentially affected community includes minority and/or low income populations, and the projected environmental impacts are likely to fall disproportionately on members of these communities, "you must develop mitigation or other methods to take these effects into account as part of your NEPA decisionmaking process." Chapter 9 further states:

"Note that your baseline and projected data on the nature of health and other environmental effects should include comparative data on releases of pollutants, as well as health data reflective of the community being considered. Specifically, examine the following three criteria, as suggested by the [Interagency Working Group on Environmental Justice]:

- (1) Whether [health or other environmental] effects (of a proposed action or alternative) are above generally accepted norms (as measured by risks and rates);
- (2) Whether the risk or rate of [hazard or other environmental] exposure appreciably exceeds or is likely to appreciably exceed those of the general population; and
- (3) Whether [health or other environmental] effects occur as a result of cumulative or multiple exposures.

Other environmental effects you must consider include those defined by the Council on Environmental Quality (CEQ) regulations for NEPA: ecological, cultural, economic, or social."

Chapter 9 states public involvement is a necessary part of environmental justice studies which should include the following activities:

- "1. Determination of appropriate study area;
2. Review of census data on income and ethnicity for the area;
3. Identification of 'pockets' needing special study; and
4. Baseline (background) research on health or other environmental effects; population beliefs and values affecting reporting and treatment; and other socioeconomic data useful for answering the threshold questions listed above."

Chapter 9 further states:

"The results of your environmental justice study should include data on the current and projected health and other environmental effects of your proposed action or alternative on minority and/or low income populations in the appropriate area of study. You should acquire an understanding of the cultural systems in the populations, so that you can estimate the impact of its actions on the culture. If the impacts are disproportionately high and adverse, you must develop suitable mitigation measures to ensure that environmental justice is achieved."

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Researcher